




To the Honorable Council
City of Norfolk, Virginia

July 19, 2016

From: David L. Ricks, Director of Public Works

Subject: Right of Entry Agreement for
VDOT's Military Highway Continuous
Flow Intersection Project

Reviewed: 
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 4/7

Approved:

Item Number:

R-18

Marcus D. Jones, City Manager

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance to authorize a Right of Entry Agreement between the City of Norfolk (the "City"), the Commonwealth of Virginia, Department of Transportation ("VDOT"), and Corman-E.V. Williams, a Joint Venture ("CEV") for improvements to property located between 1209 and 1387 N. Military Highway for work related to the Military Highway Continuous Flow Intersection Project (the "Project").

IV. **Analysis**

- The right of entry is required for construction of the Project.
- This agreement supports the Project that will produce capacity improvements along one of the most important retail corridors in the region as well as an important connecting route for traffic to and from economic centers located at Norfolk International Airport, Naval Station Norfolk, and the Joint Expeditionary Base Little Creek.
- The City is willing to permit VDOT and CEV to enter upon the property for purposes of installation of erosion and sediment control measures, clearing, placement of fill, installation of wick drains, and installation of storm drain outfalls.
- The right of entry permission granted shall be from August 1, 2016 to August 1, 2017.

V. **Financial Impact**

There is no financial impact associated with this right-of-entry.

- The construction of this project will improve the City's infrastructure and improve safety and quality of life, with the potential for encouraging economic development within the City.

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Department of Public Works and the City Attorney's office.

Supporting Material from the Department of Public Works:

- Ordinance
- Exhibit A: Right of Entry
- Exhibit B: Legal Description

Form and Correctness Approved

By 
Office of the City Attorney

Contents Approved:

By 
DEPT. Public Works

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH THE COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION AND CORMAN-E.V. WILLIAMS, A JOINT VENTURE, FOR WORK RELATED TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION MILITARY HIGHWAY CONTINUOUS FLOW INTERSECTION PROJECT.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the City Manager is hereby authorized to enter into a right of entry agreement, a copy of which is attached hereto as Exhibit A, on behalf of the City of Norfolk with the Commonwealth of Virginia, Department of Transportation and Corman-E.V. Williams, A Joint Venture, relative to certain city-owned property located between 1209 and 1387 N. Military Highway and adjacent to the right-of-way of N. Military Highway in the City of Norfolk, such parcel of property being designated in Exhibit B attached hereto, for work related to the Virginia Department of Transportation Military Highway Continuous Flow Intersection Project.

Section 2:- That the City Manager, with the advice and counsel of the City Attorney, is further authorized to correct, amend or revise the right of entry agreement as he may deem necessary, consistent with the purposes stated herein, and to do all things necessary and proper to implement the agreement.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

EXHIBIT A TO ORDINANCE

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”), made this ____ day of July, 2016, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (hereinafter “City”), Grantor, the **COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION** (hereinafter “VDOT”) and **CORMAN-E.V. WILLIAMS, A JOINT VENTURE** (hereinafter “CEV”), Grantees.

WITNESSETH:

WHEREAS, the City owns certain city-owned property located between 1209 and 1387 N. Military Highway and adjacent to the right-of-way of N. Military Highway in the City of Norfolk, said properties being shown on Exhibit A and described on Exhibit B attached hereto (“Property”); and

WHEREAS, VDOT has initiated a project for certain improvements to Military Highway known as the Military Highway Continuous Flow Intersection Project (the “Project”); and

WHEREAS, CEV was hired by VDOT for work as part of the Project; and

WHEREAS, in order complete the Project, CEV will need access to the Property for the purposes of installation of erosion and sediment control measures, clearing, placement of fill, installation of wick drains, and installation of storm drain outfalls in relation to the Project; and

WHEREAS, VDOT and CEV have requested permission to utilize the Property for such purpose, to which the City is agreeable upon certain terms and conditions.

NOW, THEREFORE, the City hereby grants to VDOT and CEV, their employees, agents, subcontractors and consultants, permission to enter upon and use the Property for the purposes set forth above upon the following terms and conditions:

1. The permission granted by this Agreement shall commence on August 1, 2016 and will terminate on August 1, 2017, subject to the City's right of revocation at any time in its sole discretion.

2. The City shall have access to the Property at all times.

3. Except as otherwise provided herein, VDOT and CEV shall take all necessary measures to ensure that the Property is returned to its original condition.

4. The City shall have the right to make periodic inspections of the manner in which CEV is using the Property and CEV shall exercise reasonable care in the performance of its work and other authorized activities.

5. Any costs associated with violations of the law, including but not limited to, remediation, clean-up costs, fines, administrative or civil penalties or charges, and third-party claims imposed on the City by any regulatory agency or by any third-party as a result of the noncompliance with applicable Federal, State or local environmental laws, regulations or nuisance statutes by VDOT and CEV, or by any of their subcontractors, consultants or sub-consultants, in connection with the work or other activities contemplated herein, shall be paid by VDOT and/or CEV.

6. CEV, at their own cost and expense, shall take out and keep in full force and effect during the term of this Agreement general liability insurance with a company authorized to do business in the Commonwealth of Virginia, insuring and naming VDOT and the City as an additional insured in the amount of at least \$1,000,000 each occurrence and \$2,000,000.00 general aggregate against liability from claims, actions and suits that may be asserted or brought against the City and/or VDOT and/or CEV, and their successors and assigns, for any injury to, or death of

any person or persons, or for any damage to, or destruction of Properties resulting from CEV's use of the Property, with evidence of such insurance being provided to the City.

7. The City shall not be responsible or liable for injuries to persons, including death or damage to the Property, when such injuries or damages are caused by or result from CEV's use of the Property under the terms of this Agreement, and CEV agrees to indemnify and hold harmless the City from and against any and all claims, demands, suits, actions and judgments of any kind or nature whatsoever, including costs and expenses, for any personal injury or property damage to any person or the Property, arising or resulting, directly or indirectly, from CEV's use of the Property under this Agreement.

8. This Agreement shall not be assigned by VDOT or CEV to any other party or entity.

9. Upon completion of the Project and all other activities on the Property permitted by this Agreement, VDOT and CEV shall leave the Property in the same condition as they existed prior to their entry upon the Property.

10. In exercising the rights granted hereby and undertaking activity pursuant to this Agreement, VDOT and CEV shall act in accordance with the applicable laws of the Commonwealth of Virginia and any other governmental body, State or Federal, having jurisdiction over such matters.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials as of the day and year first above written.

(SIGNATURE PAGES FOLLOW)

**COMMONWEALTH OF VIRGINIA, DEPARTMENT
OF TRANSPORTATION**

By: _____
Name (Printed): _____
Title: _____

**COMMONWEALTH OF VIRGINIA,
CITY OF _____, to wit:**

I, _____, a Notary Public of the City of _____,
Commonwealth of Virginia, whose term of office expires on the ____ day of _____, 20____, do
hereby certify that _____ (Title) of the Virginia
Department of Transportation, whose name is signed in the foregoing Right of Entry Agreement, has
acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2016.

Notary Public
Registration No.: _____

CORMAN-E.V. WILLIAMS, A JOINT VENTURE

By: _____
Name (Printed): _____
Title: _____

**COMMONWEALTH OF VIRGINIA,
CITY OF _____, to wit:**

I, _____, a Notary Public of the City of _____,
Commonwealth of Virginia, whose term of office expires on the ____ day of _____, 20____, do
hereby certify that _____ (Title) of Corman-
E.V. Williams, A Joint Venture, whose name is signed in the foregoing Right of Entry Agreement, has
acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2016.

Notary Public
Registration No.: _____

CITY OF NORFOLK

By: _____ (SEAL)
City Manager

ATTEST:

City Clerk

**COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:**

I, _____, a Notary Public of the City of Norfolk, State of Virginia, whose term of office expires on the _____ day of _____, 20____, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose name is signed in the foregoing Right of Entry Agreement, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2016.

Notary Public
Registration No.: _____

APPROVED AS TO CONTENT:

Director of Public Works

APPROVED AS TO FORM AND CORRECTNESS:

Deputy City Attorney